IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 161 of 2001

to

FIRST APPEAL No 218 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

and Sd/-

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? 1 to 5 No : NO

5. Whether it is to be circulated to the Civil Judge? 1 to 5 No : NO

SPL.LAQ OFFICER

Versus

PATEL TULSIBHAI SHANKARBHAI

Appearance:

MR MUKESH PATEL AGP for Petitioners

MR KM SHETH for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE D.H.WAGHELA

Date of decision: 04/05/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This group of 58 First Appeals under Section 54 of the Land Acquisition Act, 1894 ('the Act' for short) read with Section 96 of the Code of Civil Procedure is preferred against the common judgment and order dated 2.4.2000 passed by the learned Assistant Judge, Mehsana in Land Acquisition Reference No.1623 of 1995 (main) and other cognate 57 References. The appeals are preferred by the acquiring authorities against the original claimants.

2. The lands in question situated in the sim of village Nani Kadi were sought to be acquired for the purpose of Narmada Scheme and notifications dated 20.4.1992, 23.6.1992 and 26.6.1992 under Section 4 of the Act were issued. The notifications under Section 6 of the Act were issued on 16.7.1992, 24.11.1992 and 12.10.1992 respectively and the Land Acquisition Officer had by orders dated 11.4.1994, 18.4.1994 and 25.4.1994 in LAQ Cases Nos.60/92, 59/92 and 2/92 made awards and compensation fixing the value of the lands at Rs.36,000/- per hectare and Rs.24,000/- per hectare in respect of irrigated and non-irrigated lands respectively. Being dissatisfied with the awards, the claimants sought Reference under Section 18 of the Act and claimed compensation @ Rs.200/- per sq. mtr. Upon the applications for making References under Section 18 on 26.9.1994, 3.2.1995, 9.8.1995 and 23.12.1994, the Collector made References on 27.9.1995, 21.11.1995, 22.11.1995 and 18.1.1998. It was not the case of the appellants that the claimants were served with the notices under Section 12 (2) of the Act along with the awards. Nor was it the case of the appellants that the awards were declared in presence of the claimants or their advocates or agents.

3. The claimants relied upon the oral testimony of one of the applicants at Exh.17 who deposed that the claimants were taking various crops and earning Rs.60,000/- to Rs.65,000/- per year from each vigha of land; that so many facilities were available at village Nani Kadi and that the outskirts of villages Dudhai, Vidaj and Karannagar are adjacent to the outskirts of village Nani Kadi. The two witnesses examined on behalf

of the appellants deposed that the acquired lands were situated towards the southern side and were 1.5 kms. away from the village Nani Kadi which itself is about 2 kms. away from Kadi taluka place. It was admitted that the main road from Kadi to Viramgam was passing through village Nani Kadi and there were many residential societies and a High School in the sim of village Nani Kadi. It was also stated that none of the claimants had turned up in response to the notices issued under Section 9 of the Act. The Land Acquisition Officer, in making his award, had considered 12 sale instances which included the sale instances of the years 1985, 1986, 1988, 1989 and 1990. The sale instance of the year 1986 indicated the market price of Rs.6/- per sq. mtr. The claimants relied upon the previous judgments dated 4.11.1999, 2.5.1999 and 14.12.1999 in respect of the lands situated on the outskirts of villages Karannagar and Vidaj. In one of these judgments, the price of the land was fixed and awarded @ Rs.28/- per sq. mtr. in respect of the lands situated in the sim of village Vidaj and in another case, in respect of the land situated in the sim of village Karannagar, the value was fixed at Rs.40.60 per sq. mtr. Both these judgments were based upon a previous judgment awarding Rs.20/- per sq. mtr. against which the State had preferred an appeal which was dismissed. Thus, taking the rate of Rs.20/- per sq. mtr. as the basis as awarded by the previous judgment in respect of the lands of the adjacent villages and increasing the value by 10% per year for the difference in the dates of notifications under Section 4 of the Act, compensation @ Rs.32/- per sq. mtr. was fixed in the impugned judgment. However, the same was reduced by Rs.3.40 per sq. mtr. on the ground that the village Nani Kadi is situated at a distance from the Kadi-Kalol Highway and lies in somewhat interior area in comparison of the lands, the acquisition of which were taken as the basis. Thus, the total market price was fixed at Rs.28.60 per sq. mtr. out of which Rs.3.60 per sq. mtr. were already awarded in the award of the Land Acquisition Officer and hence additional amount of compensation @ Rs.25/- per sq. mtr. was awarded with other statutory benefits of solatium and interest.

4. The learned Assistant Government Pleader for the appellants mainly contended that the References were time-barred insofar as the applications for Reference were made more than six months after the notices under Section 12 (2) of the Act were served upon the claimants. In order to resolve the factual controversy regarding the dates of knowledge of the award, the record and proceedings were called for. It was found from the

original notices under sub-section (2) of Section 12 of the Act that they were issued in printed forms in which the columns for addressees and the details of lands under acquisition and the amounts of compensation and interest were filled up only with the words "as per the award". The dates of the notices appeared to be 1.5.1994 which in some notices were corrected to 1.5.1995 by overwriting and the signatures of the claimants appeared to have been obtained on the backside of the notices. Thus, there was no indication of the dates on which those notices were served on the claimants, except in case of one claimant who had put his signature with the date 6.7.1995. There was also no evidence suggesting or indicating the service of the award alongwith the notice. Therefore, the submission of the learned Assistant Government Pleader that the notices under Section 12 (2) of the Act were served on 1.5.1994 or immediately thereafter is not supported by any evidence on record. We do not find any reason to interfere with the finding that the claimants had applied for the References within the prescribed period of limitation of six months from the date of knowledge of the respective awards.

5. The other contentions of the learned Assistant Government Pleader to the effect that increase in market price of the land at the flat rate of 10% per year was not justified or that the awards and judgments in respect of the lands acquired from the adjacent villages ought not to have been taken as the basis did not impress us at all. It is clear in evidence rather an admitted fact that the villages of Karannagar, Vidaj and the outskirts of village Nani Kadi are adjacent to each other and, therefore, the awards in respect of the previously acquired lands were rightly relied upon for fixing the market value of the lands. The fact of lands in question being situated at a distance from the highway and in somewhat interior part is given effect inasmuch as Rs.3.40 per sq. mtr. has been deducted on that count. Therefore, we do not find any reason to interfere with the award of additional amount @ Rs.25/- per sq. mtr. with additional compensation under Section 23 (1-A) and solatium under Section 23 (2) of the Act with interest in terms of the impugned order. However, deduction @ 5% as the Government Share in respect of the new tenure land is not allowed in the impugned judgment and order. Therefore, in accordance with the provisions of Section 11-A as amended for the State of Gujarat, 5% by way of Government Share is required to be deducted from the amount of compensation in respect of the new tenure lands and these appeals are required to be allowed to that extent.

6. Accordingly, the First Appeals No.170, 179, 185, 186, 204, 206 and 217 of 2001 are partly allowed wherein new tenure lands are acquired and the impugned judgment and order is modified only to the extent that 5% by way of Government Share shall be deducted from the amount of compensation in respect of the new tenure lands. The rest of the impugned judgment and order stands confirmed and remains intact. The First Appeals No.161 to 169, 171 to 178, 180 to 184, 187 to 203, 205, 207 to 216 and 218 of 2001 are dismissed. Decree to be drawn accordingly. In the facts and circumstances, there shall be no order as to costs.

7. In view of the fact that the lands are acquired in the year 1992, it is expected that the respondents shall be paid the due amounts as expeditiously as possible and preferably within three months of the service of this order.

Sd/-

(M.R.Calla, J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)